IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 369 of 1995(D)

OPMV.102/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR
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APPELLANT - PETITIONER:

NARAYANI AMMA, W/O. GOVINDAN NAIR, VADAKKE KANNIYADATH VEEDU, MUPPATHADAM, ALUVA.

BY ADV. SRI.SREELAL N.WARRIER
SRI.MATHEW JOHN

RESPONDENTS - RESPONDENTS:
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1. **M.K. SUGUNAN, KANNANKUDY HOUSE, PANNIYANPARA, CHELAD P.O., CANNANORE.**

2. **T.P. ABDUL RAHIM, THENNOOR VEEDU, PALLIPPURAM KARA, MUDICAL (VIA), ALUVA (REMOVED)**

3. **THE UNITED INDIA INSURANCE CO. LTD., REPRESENTED BY ITS DIVISIONAL MANAGER, COCHIN - 16.**

THE NAME OF THE SECOND RESPONDENT IS REMOVED FROM THE PARTY ARRAY VIDE ORDER DATED 14.10.1999 IN C.M.P. NO.5650 OF 1999

BY ADV. SRI.M.S.PATTALI
SMT.JESSY GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.6.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 369 OF 1995

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Dated this the 7th day of June, 2007

J U D G M E N T

Petitioner **in O.P.(MV) No.102 of 1991 on the file of the Motor Accidents Claims Tribunal, N.Paravur is the appellant. Appeal is filed against the award passed by the Tribunal dismissing a claim petition filed by the appellant. In the O.P. it was averred that at or about 6.00 a.m. on 1.9.1989 petitioner was walking along the side of the road. A car bearing Reg. No.KRC-828 driven by the second respondent came in a rash or negligent manner and hit against the petitioner. She sustained injuries and she was taken to the Medical College Hospital and treated there as an inpatient. She filed the petition claiming an amount of Rs.1,00,000/- towards compensation under various heads. Though the respondents were served with notice, none of them entered appearance and contested the matter. Tribunal dismissed the petition holding that the criminal case registered against driver ended in his acquittal. Challenging that award this appeal is filed.**

2. Learned counsel for the appellant has argued that the reasons stated by the Tribunal for dismissal of the petition is wrong and illegal. It is argued that a Division Bench of this Court in **Simon Pathorse v. United India Ins. Co. Ltd.** (1994(1) KLT 275) has held that driver is not a necessary party and award can be passed against the owner if the driver is found negligent. In this case petitioner filed a petition claiming compensation. Owner, driver and insurer did not appear, file any written statement and contest the matter. Petitioner's son was examined as P.W.1. An eye witness was also examined. Nobody had produced the judgment in the criminal case in the O.P. Petitioner had produced certain documents such as FIR, Scene Mahazar and AMVI Report. There is nothing on record to show that the driver in the case was acquitted on the ground that he was not the person who was driving the vehicle at the time of the accident. P.Ws.1 to 3 were examined. P.Ws1 and 2 were not cross-examined. So the reasoning of the Tribunal that the driver of the offending vehicle was acquitted holding that he was not the person who drove the vehicle at the time of accident is not based on any

material. As I have already stated, the owner, driver and insurer did not contest the matter. Sections 40 to 43 of the Evidence Act deals with the relevancy of judgments. Section 43 of the Act provides that judgment is irrelevant unless the existence of such judgment is a fact in issue or is relevant under some other provisions of the Act. Even that position does not arise in this case since the judgment in the criminal case was not seen produced before the Tribunal. So the finding of the Tribunal that the petitioner was not entitled to get any compensation since she failed to prove that the vehicle was driven by the second respondent himself is illegal and unsustainable. The evidence adduced by the petitioner shows that the accident occurred due to the negligent driving of the vehicle by the second respondent.

3. It is true that the petitioner has claimed a sum of Rs.1,00,000/- as compensation. Exhibit P5(c) is the discharge memo. It shows that the petitioner sustained a compound fracture of right mandible and also she lost two teeth.

4. Considering all aspects of the matter and considering the fact that the petitioner was aged more than 80

years at the time of the accident, I am of the view that an amount Rs.5,000/ can be awarded to the petitioner towards compensation for pain and suffering and a further amount of Rs.5,000/- towards compensation for treatment expenses, inconvenience caused to the appellant, etc. So the petitioner is entitled to get Rs.10,000/- as compensation. The amount of compensation awarded by this Court will carry interest at the rate of 7% per annum. The third respondent is directed to deposit the amount. Insurer is directed to produce two cheques, one for the court fee due to the Tribunal and another for the amount due to the petitioner. If the entire amount is deposited, the Tribunal shall deduct the court fee due on the petition and disburse the balance amount.

In the result, the MFA is allowed in part in the above terms.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. 369 OF 1995

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J U D G M E N T

7TH JUNE, 2007